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ABSTRACT

This paper examines the case law that deals with the issuance of student grades, and reviews most of the reported cases dealing with the lowering of students' grades for non-academic misconduct and the use of grades to exclude students from school. School officials have been known to act arbitrarily when issuing grades to students. It is interesting to note that the lowering of student grades as a means of disciplining students for non-academic conduct is frowned upon by the courts. Also, using grades to exclude students from school because of academic failure without considering the individual rights of students is a cause for legal action. Some school districts and state legislatures have mandated specific attendance requirements to receive grades. Also, grade reduction policies have been related to attendance and school discipline in some school districts. Recommendations are made for school administrators in the areas of establishing and implementing policies that deal with issuing student grades. The decisions reviewed indicate that grades earned by students in an academic course are considered a property interest and cannot be withdrawn without due process considerations. A blanket policy dealing with the issuance of student grades without a due process plan for appeal is considered arbitrary, capricious, or in bad faith. (Author/TJH)

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THE ISSUANCE OF STUDENT GRADES AND THE COURTS

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ABSTRACT

This paper examines the case law that deals with issuing student grades. School officials have been known to act arbitrarily when issuing grades to students. It is interesting to note that, the lowering of student grades as a means of disciplining students for non-academic conduct, is frowned upon by the courts. Also, using grades to exclude students from school because of academic failure without considering the individual rights of students is a cause for legal actions.

Some school districts and state legislatures have mandated specific attendance requirements to receive grades. Also, grade reduction policies have been related to attendance and school discipline in some school districts.

This paper examines and analyzes the reported cases which deal with these issues. It also makes some recommendations for school administrators to consider when establishing and implementing policies which deal with issuing student grades.

THE ISSUANCE OF STUDENT GRADES AND THE COURTS

Public school officials have been known to act capriciously and arbitrarily when issuing grades to students. Occasionally, school officials have lowered students' grades as a means of disciplining students for non-academic conduct, and students have been excluded from school because of academic failure without considering the individual rights of the students. As a result, several students have sought judicial relief in the courts seeking readmission to academic institutions and challenging the constitutionality of the issuance of grades to public school students when factors other than academic performance are involved.

This paper examines the majority of the reported cases that deals with the lowering of students' grades for non-academic misconduct and the use of grades to exclude students from school.

Lowering Grades for Non-Academic Misconduct

Lowering students' grades by school officials as a means of discipline has been a practice of long standing in many school districts. Discipline for non-academic misconduct and academic achievement are different. Thus, if the lowering of grades is allowed for non-academic misconduct, the final grade will not reflect the student's actual achievement.

In the case, Dorsey v. Bale, a student was suspended from school for disciplinary misconduct. In keeping with an attendance policy, the student's grades were reduced by five percentage points for each of the four days the student was suspended. The district court held that the regulation was invalid and ordered the school officials to restore the student's grades. The school board appealed and the Court of Appeals held for the student.

In a similar case, Jones v. Independents School District, action was brought by three students to enjoin the school district from suspending and lowering their grades for the possession of drugs found in an unreasonable search. The court issued a preliminary injunction and enjoined the school district from denying the plaintiffs an opportunity to make-up three final examinations, from reducing grades while on a three day suspension, and ordered the school to award the Jones' their high school diplomas if their test scores were satisfactory. In addition, the defendants were enjoined from using "sniffer dogs" to search the person or property of plaintiffs Michael or Michele Jones in the absence of a reasonable cause.

The Colorado Court of Appeals in Gutierrez v. School District ruled on a school district's attendance-tardies policy that deny academic credit to students with more than seven absences even if such absences were due partially to suspensions and excused absences. In this case, students and

their parents brought action seeking a declaratory judgement and judicial review of the school board's attendance policy. The District Court ordered the school district to allow academic credit to students; and the school district appealed. The Court of Appeals affirmed the lower court's decision and held that the attendance policy was invalid.

Due process was also mentioned in connection with the issuance of grades in Casper v. Burton. In this case, a student was dropped from a practical nursing program because her performance was unsatisfactory. She alleged, among other things, that she was denied due process and was not given a proper hearing before dismissal.

The Court of Appeals held that school officials should take due process seriously. Specifically, the court held that school officials, "in order to satisfy due process prior to termination or suspension of a student for academic deficiencies, need only advise the student before he is terminated" (p. 843).

The old cliche, "the king can do no wrong," prompted school officials and the courts in certain situations to deny students due process where the issuance of grades are involved. This opinion is supported in many states by sovereign immunity. However, recent court decisions have required some modification of sovereign immunity for school officials. In fact, the Supreme Court, in Wood v. Strickland held that school officials could be sued for damages if they

violated students' constitutional rights in administrating discipline. The Court held that school officials can not be given absolute immunity to the charge of liability for damages if they knew or, reasonably should have known, that the action taken violated the constitutional rights (including due process) of students. However, the Court in Horowitz held that a hearing is not required before school officials make the decision to dismiss a student for academic deficiencies. This position was also supported in earlier lower court decisions in Greenhill and Connelly. It might be helpful for school officials to be mindful of the fact that students have a constitutional right to due process when action taken against them is arbitrary, capricious, in bad faith, or is discriminatory in its application.

The Supreme Court in Goss v. Lopez and Wood v. Strickland established the fact that public school students are entitled to due process prior to disciplinary action in most instances. The case law that has been established suggests that school officials who coin and implement school policy that adhere to procedural due process and other constitutional rights that students are entitled can expect little judicial interference.

The Supreme Court has decided one case involving the application of due process in issuing student grades. However, there is no reason to believe that in the future, the Court will not revisit Horowitz or will treat the issuance of

grades differently than it has in other cases dealing with students where procedural due process was not afforded. Furthermore, the exit examination for high school graduation and the increased academic admission requirements for entrance to post secondary school might increase judicial interventions in the issuance of grades and testing students where constitutional matters are questionable. In fact, Mr. Justice Powell, dissenting in Goss v. Lopez, stated that "no one can foresee the ultimate frontiers of the new 'thicket' the Court has now entered" (p. 565). To me, this thicket includes the territory that school officials have maintained and defended for a long time. This thicket may also include many of the new reform legislative enactments (exit examinations, attendance policies, that must be met before academic credits can be earned, promotion and retention policies, etc.) that have been enacted in education in this decade.

The Use of Grades to Exclude Students from School

To date, the Supreme Court has rendered only one decision that deals specifically with excluding a student from an academic institution for academic deficiencies. However, the lower federal and state courts have given judicial attention to the issuance of student grades when they alleged that other constitutional rights were violated in the grading process. These courts have taken the position that school officials are more qualified than the courts to issue student grades, and to establish academic standards since they are charged with the

responsibility of dealing with the trends and issues in education. These courts, however, do not allow school officials to act capriciously and arbitrarily, or in bad faith when issuing grades to students or using grades to exclude students from school.

In the case of the Board of Curators of the University of Missouri v. Horowitz, a medical student challenged her expulsion from the medical school of a public university alleging that her dismissal, during her final year of study for failure to meet academic standards, without providing her procedural due process was a violation of her constitutional rights. The district court held for the university and the student appealed, and the Court of Appeals reversed the District Court's decision. The United States Supreme Court, however, reversed the Appeals Court's decision and held that "the student was fully informed of [SIC] faculty dissatisfaction with her clinical progress and the consequent threat to her graduation and continued enrollment was accorded procedural due process with respect to her dismissal for academic deficiencies notwithstanding lack of formal hearing" (p. 948). This court also held that a formal hearing is not necessary before school officials make the decision to exclude a student from school for academic deficiencies.

Noticeably, a year prior to the Horowitz decision, a "physician brought action against officials of the University of Missouri and the Department of Mental Health for alleged

denial of due process and discrimination on basis of national origin following the physician's residency training program" (p. 340). The district court held for the defendants and the plaintiff appealed. The Court of Appeals reversed the lower court's decision and remanded the case to the district court with instructions that ordered the university:

1. To expunge from all records any reference to the action taken against Dr. Navato;
2. To give Dr. Navato adequate notice to all of the charges against him; and
3. To provide Dr. Navato with a hearing before a committee which will then determine whether he should be issued a certificate of completion for three years of training and whether he should be reinstated in the program. (p. 347)

The Court of Appeals' decision in this case, in my opinion, was rendered in favor of the plaintiff because the defendants did not provide the plaintiff with at least minimal procedural due process.

In Connelly v. The University of Vermont and State Agricultural College, a third year medical student alleged that his instructor had decided that he would not give him a passing grade in pediatrics-obstetrics, regardless of the quality of work he did. The court held that the school should grant the student a fair hearing based on the student's

allegation that the instructor acted arbitrarily, capriciously and in bad faith, but not on the charges that he should have passed or failed the course.

Another medical student in Greenhill v. Baily alleged that he had been wrongfully deprived of his position as a medical student by arbitrary and capricious actions and was not afforded procedural due process. The court held for the defendant because the student failed to meet the burden of proof of proving his allegations and reminding him that "he had received preferential treatment when he was admitted to the institution as an advanced transfer student" (p. 634).

In Depperman, a medical student brought action against the University of Kentucky and its medical school officials, "challenging the defendant's action leading to his unwilling departure from the students rank" (p. 72). The defendant in this case had placed the student on probation and "cited in a letter to the student that he demonstrated inability to function effectively with other students" (p. 73) even though "his academic deficiencies and emotional stability was exemplary" (p. 73). It was the latter judgement that motivated the student to appeal the decision. Although the student was suspended, he was given an opportunity to discuss the matter with the promotion committee. After the discussion, the committee recommended to the University faculty that the student be terminated. The student resigned before the final decision of the Faculty Council, and

afterwards the court held for the defendants, stating that the student's charges were invalid and vague.

The Alabama Court of Appeals, in Mustell v. Rose, addresses the issue of a medical student who sought readmission to medical school after being excluded for academic failure. The student alleged that school officials arbitrarily changed some of his grades from passing to F's. The awarding of the F's was sustained when the Court of Appeals upheld the decision of the lower court.

A first-year nursing student, in Brookin v. Bonnell, brought action seeking a preliminary injunction for an immediate reinstatement after she was expelled for failing to meet academic entrance standards. The student alleged that she had been excluded from school without being afforded a proper notice and hearing prior to her expulsion. The defendants contended that the student was excluded from school because of academic failure rather than disciplinary misconduct and that she was not entitled to a due process hearing.

The court held for the student and ordered that she be fully reinstated as a student unless she was given a due process hearing within ten days. There was nothing in this decision, however, which prohibited the defendants from requiring the student to comply with the rules of the institution, including academic entrance standards and other requirements.

In sum, issuing grades to students arbitrarily and capriciously without consideration for due process seems to be unconstitutional, and may be subject to judicial intervention.

School officials must remember that the court, in Tinker, established the student as a citizen. Thus, guaranteeing the student constitutional protection--protection that includes the fundamental rights of equal protection and due process. There is no exception to these fundamental rights in the issuance of student grades.

Conclusion

According to the cases examined, grades can not be lowered or used as a means of punishment. In addition, the decisions cited in this paper indicate that grades earned by students in an academic course is a property interest (in my opinion) and cannot be withdrawn without due process considerations. Moreover, a blanket policy dealing with the issuance of student grades without a due process plan for appeal, could be considered as arbitrary and capricious, or in bad faith.

References

Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978).

Brooking v. Bonnell, 363 F.Supp. 379 (Penn 1973).

Caspar v. Burton, 513 F.2d 843 (Tenth Cir., 1975).

Connelly v. University of Vermont and State Agricultural College, 244 F.Supp. (Vt. 1965).

Depperman v. University of Kentucky, 371 F.Supp. 73 (Ky. 1974).

Dorsey v. Bale, 521 S.W. 2d 76 (Ky. 1975).

Goss v. Lopez, 419 U.S. 565 (1975).

Greenhill v. Bailey, 378 F. Supp. 632 (Iowa, 1974).

Gutierrez v. School District R-1, 583 p. 2d 935, (Colo., 1978).

Jones v. Latexo Independent District, 499 F.Supp. 223 (Tx., 1980).

Mustell v. Rose, 282 Ala. 358, 211 So 2d 489 (1968) Cert. denied 393 U.S. 396 (1968).

Navato v. Sletten, 560 F 2d 340, (1977).

Tinker v. Domines Independent School District, 393 U.S. 509 (1969).

Wood v. Strickland, 420 U.S. 308 (1975).